IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3079 OF 2005

Shri Prabhakar Gharu Rane
and Anr. ...Petitioners
Versus
Shri Nitin Manohar Burande
and Anr. ...Respondents.

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Miss.Gauri Godse, Advocate for the Petitioners.
Mr.Rajiv Patil, Advocate for Respondent No.1.
Ms.M.M.Deshmukh, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : AUGUST 16, 2006.

P.C.:

1. Heard Miss.Godse learned Advocate for the petitioners-original accused, Mr.Patil learned Advocate for Respondent No.1-original complainant and Ms.Deshmukh, learned APP for the State.

2. Respondent No.1-original complainant had filed a complaint against the petitioners under Sections 427, 504 & 506 r/w. 34 of IPC.. The said case is numbered as Summary Criminal Case No.716 of 2005 and is pending before the learned J.M.F.C. Raigad at Alibag. In the said case the learned Magistrate issued process against the petitioners under Sections 427, 504, 506 r/w. 34

of IPC.

3. Being aggrieved by the said order, the petitioners preferred Cri.Revision Application No.134 of 2005 before the Sessions Court, Raigad at Alibag. The said revision application came to be dismissed by order dated 25.10.2005. Being aggrieved by the said order, this Writ Petition has been preferred.

4. Ms.Godse, learned Counsel for the Petitioners has submitted that the complaint is dated 11.07.2005 and thereafter on 20.7.2005 the statement of the complainant came to be recorded by the Police Officer of Alibag Police Station. In the said statement, it is stated by the complainant that a Civil Suit has been filed by the present petitioners and the complainant is agreeable to whatever decision that will be passed in the said Civil Suit. He has further stated that the petitioners had given a written undertaking to him that they would not abuse or threaten him in any manner. In view of this, the complainant has prayed that his complaint may be filed.

5. On going through the statement given by the complainant, prima facie, it appears that the complainant did not wish to pursue the complaint. Though, the statement dated 20.07.2005 given by the complainant i.e. present Respondent No.1, is referred to in the revision preferred by the present petitioners, the said statement has not been taken into consideration by the learned Sessions Judge while disposing the revision application. In my view, in the facts and circumstances of this case, it was necessary to take the statement dated 20.07.2005 of the complainant into consideration. However, the learned Sessions Judge has not considered the said statement.

6. In this view of the matter, the order of the learned Sessions Judge dated 25.10.2005 is set-aside. The learned Sessions Judge shall hear Criminal Revision Application No.134 of 2005 afresh, and dispose of the same on merits after hearing necessary parties.

7. Writ Petition is disposed of.

(SMT.V.K.TAHILRAMANI,J.)